

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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In Re STERLING FOSTER & CO., Inc.,  
SECURITIES LITIGATION

MDL Docket No. 1208

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**MEMORANDUM OF  
DECISION AND ORDER  
99 CV 2789 (ADS) (MLO)**

ROBERT LEVITT for himself and as custodian  
for Richard Levitt and Monica Levitt,  
ROBERT RICE, STEPHEN G. SIBEN,  
STEPHEN STOBEHN, STANLEY  
VELTKAMP, PHILIP C. VITANZA for himself  
and Elizabeth Vitanza and Luke Vitanza, JOHN T.  
WHITE, GUY V. WOOD, CARL ZANDER, JR.,  
and TED M. and KATHRYN N. JONES,  
as Trustees,

Plaintiffs,

-against-

BEAR STEARNS & CO, INC., and BEAR  
STEARNS SECURITIES CORP.,

Defendants.

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THOMAS ROGERS, et al.,

**97 CV 189 (ADS) (MLO)**

Plaintiffs,

-against-

STERLING FOSTER & CO., INC., et al.,

Defendants.

**Consolidated With:**

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LEO W. SMITH, et al.,

Plaintiffs,

-against-

**97 CV 610 (ADS) (MLO)**

STERLING FOSTER & CO., INC., et al.,

Defendants.

-----X  
WILLIAM V. WRIGHT, et al.,

Plaintiffs,

-against-

**97 CV 1689 (ADS) (MLO)**

STERLING FOSTER & CO., INC., et al.,

Defendants.

-----X  
MICHAEL REYNOSA, et al.,

Plaintiffs,

-against-

**97 CV 3253 (ADS) (MLO)**

STERLING FOSTER & CO., INC., et al.,

Defendants.

-----X  
ANDREW PETIT, et al.,

Plaintiffs,

-against-

**97 CV 3775 (ADS) (MLO)**

STERLING FOSTER & CO., INC., et al.,

Defendants.

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**APPEARANCES:**

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**ROBERT J. PAULSON**  
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**SPATT, District Judge.**

This class action involves allegations by the Plaintiffs that the Defendants

made misstatements and omissions and were engaged in market manipulation with respect to six public offerings. The detailed factual background of this dispute is set forth in the Court's decisions and orders, including the following: In re Sterling Foster & Co. Sec. Litig., 222 F. Supp. 2d 216 (E.D.N.Y. 2002); Levitt v. Bear Stearns & Co. (In re Sterling Foster & Co.), 222 F. Supp. 2d 312 (E.D.N.Y. 2002); the Second Circuit's August 13, 2003 decision, Levitt v. Bear Stearns & Co., 340 F.3d 94 (2d Cir. 2003); Levitt v. Bear Stearns & Co. (In re Sterling Foster & Co. Sec. Litig.), No. 99 cv 2789, 2006 U.S. Dist. LEXIS 80861 (E.D.N.Y. Oct. 31, 2006); and Levitt v. Rogers, No. 06-5298, 2007 U.S. App. LEXIS 29362 (2d Cir. Dec. 18, 2007). Familiarity with the previous decisions is presumed.

On May 23, 2006, the Lead Plaintiffs and Defendants Michael Krasnoff, Nancy G. Shalek, Lasergate Systems, Inc., Bear, Stearns & Co., Inc., Stearns Securities Corp. and Richard Harriton (the "Bear Stearns Defendants") (collectively, the "Settling Defendants") executed a Stipulation and Agreement of Settlement ("Settlement Agreement"). The Settlement Agreement provided for a total cash settlement of \$1,400,000 which resolved all remaining claims that were not dismissed or settled pursuant to the 2002 partial settlement agreement. The 2002 partial settlement agreement provided for a cash settlement of \$2,200,000 and Lead Counsel were awarded fees of 25% of that settlement amount. On October 31, 2006, this Court approved the Settlement Agreement.

In its most recent December 18, 2007 Order, the Second Circuit vacated this Court's September 30, 2004 decision denying a motion by Robert Levitt, Robert Rice, Stephen G. Siben, Stephen Strobehn, Stanley Veltkamp, Philip C. Vitanza, John T. White, Guy V. Wood, Carl Zander, Jr., and Ted M. and Kathryn Jones (the "Levitt Plaintiffs") to be appointed as lead plaintiffs. The Second Circuit also vacated this Court's October 31, 2006 decision accepting the settlement and plan of allocation.

The Second Circuit found that the Levitt Plaintiffs had the largest financial interest in the outcome of the case, after all claims against Bear Stearns by Plaintiffs other than the ML Direct class and the Applewoods class were dismissed as time barred. The Second Circuit found that it would have been appropriate for this Court to appoint the Levitt Plaintiffs as lead plaintiffs at that time. The Second Circuit further determined that the settlement was not fair because there was insufficient evidence of Bear Stearns' wrongdoing. The Second Circuit also determined that further discovery is necessary "to provide the parties and the court with information sufficient to make a determination regarding whether the proposed settlement is fair and reasonable."

Levitt, 2007 U.S. App. LEXIS at \*6.

On December 28, 2007, the Levitt Plaintiffs moved to be appointed lead plaintiffs and moved for the appointment of their attorney, Leslie Trager, as lead counsel. The Levitt Plaintiffs note that because they are the only group to have appealed from the proposed settlement, only the ML Direct case remains pending as a

result of the Second Circuit's Decision. The Levitt Plaintiffs contend that because they have the largest financial interest, they should be appointed lead plaintiffs.

Although the Current Lead Plaintiffs filed a response to the Levitt Plaintiffs' motion, they note that in consideration of the Second Circuit's Decision, they do not oppose the motion, as long as certain settlements remain undisturbed. Accordingly, it is hereby

**ORDERED**, that the Levitt Plaintiffs' motion to be appointed lead plaintiffs is **GRANTED**; and it is further

**ORDERED**, that the Levitt Plaintiffs' motion for the appointment of Leslie Trager, Esq., as lead counsel is **GRANTED**; and it is further

**ORDERED**, that the parties are directed to appear in courtroom 1020 on February 19, 2008 at 10:00 am for a status conference; and it is further

**ORDERED**, that lead counsel is directed to serve a copy of this Order on all parties on or before February 14, 2008.

**SO ORDERED.**

Dated: Central Islip, New York  
February 12, 2008

/s/ Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge